IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 13TH DECEMBER 2007 / 22ND AGRAHAYANA 1929

Bail Appl..No. 7453 of 2007(B)

(CRIME NO. 1102/2007 OF KOLLAM EAST POLICE STATION)
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PETITIONER/2ND ACCUSED:

ALIYARU KUNJU, AGED 68 YEARS,
S/O.SULAIMANKUNJU, VELIYIL VEEDU,
6 MANAKKADU A, VADAKKEVILA, KOLLAM.

BY ADV. SRI.DILEEP P.PILLAI.

RESPONDENT/ COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/12/2007,THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7453 of 2007

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Dated this the 13th day of December, 2007

O R D E R

Application for anticipatory bail. The petitioner is the second accused. Altogether there are two accused persons. The petitioner is the father-in-law of the first accused. He faces allegations in a crime registered alleging commission of offence punishable under Sections 3 and 5 of the Explosive Substances Act. The crux of the allegations is that in the house, where the petitioner and his son-in-law were residing, clandestine activity using explosive substances was going on. There was an explosion and the place had gutted in fire. The police and fire fighting officials reached the scene and the fire was put out. It was realised that the accused were for a long period of time carrying on clandestine activity in the house in question with explosive substances. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He relies on documents to

show that the place of permanent residence of the petitioner is not at the scene of crime, but elsewhere. He further submits that he, an old man, cannot be mulcted with culpability under the Explosive Substances Act merely because his son-in-law is involved in this crime. The petitioner may, in these circumstances, be granted anticipatory bail, it is prayed.

3. The learned Prosecutor opposes the application. He submits that there are satisfactory materials collected to show that both the accused persons were residing in the same premises and that clandestine activity in explosive substances was going on in the said premises. It is too early for the prosecution to specify with precision the overt acts of two different accused persons and the extent of their complicity. The totality of circumstances point to the complicity of the petitioner and at any rate this is not a fit case where the extra ordinary equitable discretion under section 438 Cr.P.C. can or ought to be invoked in favour of the petitioner. The petitioner deserves to be interrogated thoroughly. Better light on the details of the crime can be drawn only by such interrogation, submits the Prosecutor.

4. Having considered all the relevant inputs, I am unable to perceive any features in this case, which would justify the invocation of the extra ordinary equitable discretion under section 438 Cr.P.C. in favour of the petitioner. This, I agree with the learned Prosecutor, is a fit case where the petitioner must be directed to appear before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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